

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-051069

09/02/2014

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT  
M. MINKOW  
Deputy

CLAIRE PESIN

ELY WINFIELD SLUDER

v.

BRETT FENN GOODMAN, et al.

BEN J HIMMELSTEIN

MINUTE ENTRY

Pending before the Court is Defendants' "Partial Motion to Dismiss Claims Subject to Arbitration Against Bluflamne, LLC [and] Motion to Dismiss Claims Against FG Fine Metal Products, LLC -And- Motion to Compel Arbitration" (filed July 29, 2014) ("Motion"). No Response was filed.

When addressing a motion under Rule 12(b)(6), this Court must "assume the truth of the well-pled factual allegations [in the complaint] and indulge all reasonable inference therefrom." *Lerner v. DMB Realty, LLC*, 234 Ariz. 397, 401, 322 P.3d 909, 913 (Ct. App. 2014) (*citing Cullen v. Auto-Owners, Ins. Co.*, 218 Ariz. 417, 419, 189 P.3d 346 (S. Ct. 2008)), "Dismissal is appropriate under Rule 12(b)(6) only if 'as a matter of law [ ] plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.' " *Id.*

The Defendants are: (1) Brett Fenn Goodman ("Mr. Goodman"), Goodman Fabrications, Inc. ("Fabrications"); (2) Bluflame USA LLC ("Bluflame"); and (3) GF Fine Materials Products LLC ("GFF").

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Applying these standards, the Court:

- Will deny the Motion with respect to Mr. Goodman because the motion relies on a contract and a promissory note but the Motion offers the Court only the promissory note, undermining the Court's ability to assess whether the contract/promissory note Claims against Defendant Goodman should be dismissed under the arbitration provision of the contract;
- Will grant the Motion with respect to Bluflame and GFF without prejudice and with express leave to amend the complaint no later than September 15, 2014. While the Complaint alleges that Mr. Goodman "conducts business" through these entities, the Complaint does not offer the entities fair notice upon which their liability purportedly arises. Thus, the Court finds that these claims are not well pled and violate Rule 8 of the *Arizona Rules of Civil Procedure*. The dismissal of Bluflame and GFF shall take effect immediately on September 15, 2014, absent the filing of an amended complaint; and
- Will deny Defendants' request for attorney's fees and costs, without prejudice.

IT IS SO ORDERED.